

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 412 of 2007
With
SPECIAL CRIMINAL APPLICATION No. 413 of 2007
With
SPECIAL CRIMINAL APPLICATION No. 414 of 2007
With
SPECIAL CRIMINAL APPLICATION No. 415 of 2007

For Approval and Signature:**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SURESHBHAI A. SHAH - Applicant(s)**Versus**

CENTRAL BUREAU OF INVESTIGATION NOTICE OF THIS PETITION
TO B - Respondent(s)

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Appearance :

MR TUSHAR MEHTA for Applicant(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 10/09/2007****COMMON ORAL JUDGMENT**

1.As common question of law and facts arise in all
these petitions, they are being disposed of by

this common order.

2. The petitioner came to be charge-sheeted by the CBI for the offences punishable under sections 120(B), 420, 467, 468, 471 of I.P.C. r.w. section 13(2) r.w. section 13(1)(d) of the Prevention of Corruption Act. The allegations levelled against the petitioner was that while he was working as Custom Inspector of Public Bonded Warehouse, Gandhinagar during the year 1990 he entered into criminal conspiracy with one another accused with an intention to cheat the Custom Department and in furtherance thereof he by abusing his legal position released some goods alleged to have been imported by M/s. Gujarat Agro Industries Corporation, Ahmedabad. It was also further alleged that the accused made false endorsement that the duty is paid as per the bill of entry and that the said Challan was already utilized for the release of some quantity of the goods by the same importer through bill of entry. It was further alleged that the importer again utilized the same by

altering the challan for release of the goods. It was further alleged that it was within the knowledge of the accused or having reasons to believe that the abovementioned challens are manipulated, still the goods were released on the basis of the said challans through bill of entries and not only the accused – petitioner committed offence under the I.P.C. but also committed criminal misconduct by abusing his official position causing wrongful gain to the accused No.2 and loss to the Exchequer. After thorough investigation, charge-sheet came to be filed and the charge also came to be framed and therefore, the petitioner – original accused preferred application for discharge, which came to be dismissed by the learned Special Judge (CBI Cases), Court No.3, Ahmedabad by observing that there is prima facie evidence and the material collected during the investigation in form of Challans, bill of entries, etc., and there is no dispute about the Challans having not been properly marked and the said Challans used twice. Under the circumstances, considering

the decision of the Hon'ble Supreme Court in case of ***Smt. Om Wati & Another V/s. State through Delhi Administration & Others*** reported in **AIR 2001 SC 1507**, the Special Court observed that at the stage of passing the order in terms of section 227 of the Criminal Procedure Code, the Court merely to peruse the evidence in order to find out as to whether or not there is sufficient ground for proceeding against the accused. Under the circumstances, the learned Special Judge rejected the application for discharge and being aggrieved with the same, the petitioner has preferred the present petitions under Article 227 of the Constitution of India.

3. It appears from the pleadings, more particularly, on behalf of the petitioner that at the most, the act and the omission on the part of the petitioner – accused can be termed as negligence or lapse in verification of the Challans and other documents but that by itself would not suggest any ill motive or any kind of involvement for any wrongful gain of

consideration. It is submitted that when the accused was not in a position to abuse his position being an Inspector particularly when the documents are routed in different channels subject to verification and could not have shown any favour for any consideration and therefore, the provision of Prevention of Corruption Act alleging the abuse of position for wrongful gain or consideration is misconceived and therefore, it is requested to quash the charge-sheet as well as the impugned order passed by the learned Special Court.

4. On the other hand, Shri K.T.Dave, learned APP while opposing the present petitions has submitted that after proper investigation as prima facie case is found against the petitioner, the petitioner has been charge-sheeted. Relying upon the decision of the Hon'ble Supreme Court in case of ***State of Orissa & Another V/s. Saroj Kumar Sahoo*** reported in **2005(13) SCC 540**, learned APP has submitted that at the stage of considering the charge-sheet

and/or framing charge, the learned trial Court is not required to minutely consider the evidence and/or appreciate the same so as to come to the conclusion whether there are chances of conviction or not. At this stage, what is required is that whether there is a prima facie case against the petitioner for further trial or not and by making above submission, it is requested to dismiss the above petitions.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. Petitioner, who was at the relevant time serving as Custom Inspector at Public Bonded Warehouse, Gandhinagar is charge-sheeted for the offence under section 120(b), 420, 467, 468, 471 r.w. Section 468 of the Indian Penal Code and section 13(2) r.w. section 13(1)(d) of the Prevention of Corruption Act; 1988 and the charge is framed against the petitioner for the aforesaid offences. He has submitted an application to

discharge him by submitting application under section 227 of the Criminal Procedure Code. On appreciation of evidence on record, the learned Special Judge (CBI Cases), Court No.3, Ahmedabad has observed that there is a prima facie evidence and material collected during the investigation in the form of challans, bills of entry, etc. There is no dispute about the challans having not been properly marked or the same challans have been used twice. Thus, the learned Special Judge was satisfied that there is a prima facie case made out to frame the charges under section 228 of the Criminal Procedure Code. The learned Special Judge also considered the decision of the Hon'ble Supreme Court in case of **Smt. Om Wati & Another** (supra) and the scope and ambit, which is required to be considered at the time of framing of the charge. As held by the Hon'ble Supreme Court in the aforesaid decision, the High Courts shall not interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to

interdicting the trial against the accused persons. The Hon'ble Supreme Court in the aforesaid decision in para – 12 has observed as under :-

“Para – 12. We allow this appeal by setting aside the order of the High Court and upholding the order of the trial Court. We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law.”

7. In the case of **Saroj Kumar Sahoo** (supra), the Hon'ble Supreme Court has observed and held that while exercising the powers under section 482 of the Criminal Procedure Code, the High Court would not ordinarily embark upon an enquiry

whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. It is also further observed by the Hon'ble Supreme Court that it is the function of the trial Judge to the effect that there is a prima facie evidence and material collected against the petitioner during the investigation and when considering the same, application submitted by the petitioner for discharge has been rejected, it cannot be said that the learned Special Judge (CBI Cases) has committed any error, which calls for the interference of this Court in exercise of the powers under Article 227 of the Constitution of India. Under the circumstances, no case is made out to discharge the petitioner – original accused and present petitions deserve dismissal and are accordingly dismissed.

[M.R.Shah, J.]

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